

Summary of Changes  
to  
Procedure 200.1-3  
Processing Litigation Requests

**Revised Version Issued as P 200.1-3A**

LM Procedure 200.1-3, Processing Litigation Requests of 10/24/05, has undergone minor revisions. The revised procedure includes updated references and revises formatting. Please replace LM Procedure 200.1-3 with LM Procedure 200.1-3A.

# U.S. Department of Energy Office of Legacy Management



## Procedure: 200.1-3a

Effective: 10/4/06

SUBJECT: PROCESSING LITIGATION REQUESTS

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1. PURPOSE.

To provide the processing steps necessary to respond to subpoenas and discovery requests for records under the custodianship of the U.S. Department of Energy (DOE) Office of Legacy Management (LM).

2. CANCELLATION. Procedure 200.1-3, Processing Litigation Requests, dated 10/24/05

3. REFERENCES.

- a. 10 *Code of Federal Regulations* (CFR) 1004, Freedom of Information, DOE Guidance
- b. 10 CFR 1008, Records Maintained on Individuals (Privacy Act), DOE Guidance
- c. 36 CFR Chapter XII, Subchapter B, Records Management
- d. DOE Order 243.1, Records Management Program
- e. DOE Guide 1324.5B, Implementation Guide for 36 CFR Chapter XII – Subchapter B, Records Management
- f. LM Procedure 200.4, Records Management

4. DEFINITIONS.

- a. Discovery -- Pre-trial devices that can be used by one party to obtain facts and information about the case from the other party in order to assist the party's preparation for trial.
- b. Litigation File -- Collection of responsive documents related to a request for information relating to a legal proceeding.
- c. Office of General Counsel (GC) -- DOE organization responsible for providing legal advice, counsel, and support to the DOE Secretary, Deputy Secretary, and all Departmental elements, except the National Nuclear Security Administration and the Federal Energy Regulatory Commission, and for effectively representing the Department as counsel before Federal, state, and other governmental agencies and courts. GC assures that DOE operates in compliance with all pertinent laws and regulations.
- d. Program Records Official (PRO) -- The individual ensuring all records management practices are properly executed.
- e. Records -- Include all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government or because of the informational value of data in them.
- f. Records Liaison Officer (RLO) -- Individual or individuals, designated by the PRO, responsible for overseeing the LM records management program in cooperation with the DOE Records Officer.
- g. Records Management Support Staff -- Personnel who provide support and tracking of requests by searching for responsive documents, maintaining request files, and preparing response packages.
- h. Responsible Organization -- Entity having custodianship of the responsive documents or information needed to respond to a request.
- i. Review -- The process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld.
- j. Search -- All time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents.

- k. Subpoena -- A subpoena is a command to appear at a certain time and place to give testimony upon a certain matter. A subpoena for documents (duces tecum) requires production of records, documents, or other information.

5. QUALITY CONTROL.

The RLO shall review this procedure annually or as necessary to accommodate changing conditions within LM and to ensure compliance with applicable laws, regulations, and DOE requirements.

6. RESPONSIBILITIES.

- a. The GC provides guidance to LM concerning response to litigation-related requests. The GC may advise LM personnel concerning the types of information needed to properly respond to a request and may provide a response deadline.
- b. The RLO:
  - Provides oversight for all subpoena and discovery requests LM receives.
  - Receives subpoena and discovery requests, sets a response schedule for each, and ensures timely response.
  - Analyzes documentation to verify that information in each response package is complete.
- c. The Records Management Support Staff:
  - Performs searches using appropriate finding aids for responsive documents and information.
  - Supports responsive document search-and-response activities relating to subpoena and discovery requests, including copying requests, maintaining request files, and preparing response packages.

7. TRAINING REQUIREMENTS.

Personnel responding to litigation requests shall be cognizant of applicable portions of this procedure.

8. DOCUMENT CONTROL.

- a. The current and official controlled hard copy version of this document shall reside with the Directives Coordinator.

- b. The Directives Coordinator shall place the most current version of the read-only document on the LM Intranet.

9. PROCEDURE.

The procedural steps in this section provide LM personnel handling litigation requests with instructions for responding to a subpoena or discovery request. The steps are designed to help ensure personnel respond with the proper information within the timeframe specified.

Attachment A. illustrates the processes for handling litigation requests.

- a. The RLO:
  - (1) Reviews the request for information.
  - (2) Identifies the responsible organization and forwards the request to the responsible organization's Records Management Support Staff or other departmental personnel serving as custodian of potentially responsive documents. The RLO includes in the request any necessary instructions concerning search and retrieval, special reviews of the responsive documents, responsive documents packaging, and the response deadline for the Records Management Support Staff.
- b. The Records Management Support Staff or other custodian:
  - (1) Searches for and retrieves responsive documents using the appropriate finding aids. Documents may be contained in both active and inactive collections.
  - (2) Notifies the RLO in writing if responsive documents cannot be supplied within the period specified. This notification should include a summary of efforts to date to locate the responsive documents and an estimate of when the Records Management Support Staff will supply the response package.
  - (3) Coordinates any special reviews of the responsive documents as instructed by the RLO.
- c. The Records Management Support Staff:
  - (4) Copies responsive documents, following any special packaging or pagination instructions provided by the RLO. The Records Management Support Staff takes care not to include documents with no information relevant to the request or duplicate documents unless those duplicate documents contain relevant handwritten notes on the document.
  - (5) Assembles the responsive documents into a package according to instructions provided by the RLO and prepares a response transmittal letter. Response

instructions may specify the number of hard copy packages or may specify an electronic format (e.g., e-mail attachment, compact disc).

- (6) Places a copy of the responsive documents in the litigation file.
- (7) Sends the response package to the RLO.
- (8) Returns any original documents to the appropriate custodians.

d. The RLO:

- (1) Signs the response package after reviewing it for completeness. The RLOs works with the Records Management Support Staff if response package revisions are necessary.
- (2) Forwards the response package to the requestor.

10. ATTACHMENTS.

Attachment A. – Litigation Request Flowchart

Approved: Original signed by Celinda H. Crawford  
Director  
Office of Business Operations

## Attachment A. – Litigation Request Flowchart

